E-rate Update Avoiding Pitfalls and Denials

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Update and Pitfalls

- E-rate Update
- Common Pitfalls
  - Competitive Bidding
  - Category of Service
  - Missing Documentation
  - Inappropriate Roles
  - Failure to Pay/File

Updates and Pitfalls

▸ Less Common Pitfalls
  ◦ Service Provider Issues (SPIN Changes, Service Substitutions)
  ◦ Audits
  ◦ Funding Denials and Appeals

E-rate Update

- New requirements from last fall have gone into place
  - Restrictions on SPIN changes
  - Dark fiber (ARNs/RENs/others)
  - Gift Rules
  - Tech Plan Requirements
  - Disposal of Obsolete Equipment
- New CIPA requirements go into effect for FY2012
  - Limited impact on libraries

E-rate Update

- New NPRM likely to be issued soon (winter/early spring 2012)
  - Expansion of dark fiber eligibility
    - Pay for greater share of installation
    - Extend eligibility beyond property line
  - Restrictions on eligible services
    - Elimination of voice phone / non-broadband services
  - How to deal with running out of funding for P2 services

Common Pitfalls

- Most applicants who are denied are denied for simple errors
  - Relatively few are denied for "fraud"
- Common denial reasons for Arizona Libraries:
  - 28 day violation (competitive bidding)
  - 470 doesn't support the services sought (category of service)
  - Missing Documentation
  - Funding Cap (P2 services)

Additional Pitfalls to Avoid

- Additional Pitfalls:
  - Contract Dates (contract not in place when application filed)
  - Service provider playing an inappropriate role in the competitive bidding process
  - Failure to pay the applicants' share
  - Failure to respond to a review question
  - Failure to file invoices

Competitive Bidding Violations

- 28 day violation is one of many competitive bidding violations
- Key to avoiding competitive bidding violations is to have a fair and open process that follows E-rate deadlines *and document that process*
  - No "inside information" provided to vendors prior to or during the competitive bid process
  - Any information shared with one vendor must be shared with all interested vendors
  - No information can be withheld from one vendor if provided to another
- Applicants are responsible for ensuring there are no competitive bidding violations

Competitive Bidding Violations (cont'd)

- Most common competitive bidding violations:
  - 28 day violation
  - Contract award date violation
  - Failure to evaluate bids
    - Cannot select incumbent simply because they are the incumbent
  - Sharing information with vendors
  - Receiving gifts from vendors

Category of Service Violations

- Category of service violations occur when an applicant has a funding request listed in the wrong category of service
  - Often occurs during PIA review when category of service is changed with applicants' consent
- Typically establishing 470 doesn't support the new category of service
  - Services can also become ineligible when moved from one category to another (e.g. WANs moved from Telecommunications Service to Internet Access Service)

Missing Documentation

- Typical missing documents:
  - Bid evaluation worksheets and related documents
  - Signed contract
  - Letters of Agency
  - Documentation to support the estimated cost from the funding request
  - Documentation of CIPA compliance (when applicable)

Appropriate (and Inappropriate) Roles

▸ Applicants…
  ◦ Write technology plan
  ◦ Work on Form 470 and RFP
  ◦ Evaluate bids/responses to 470 and RFP
  ◦ Sign contracts (if appropriate)
  ◦ File Form 471 and Item 21 attachment
  ◦ Take the lead on PIA review

Appropriate (and Inappropriate) Roles (cont'd)

- Applicants (cont'd)
  - Get Technology Plan approved
  - File Form 486
  - Select Invoice Method
  - Retain Documentation
  - REAP BENEFITS OF THE PROGRAM

Appropriate (and Inappropriate) Roles (cont'd)

- Service Providers…
  - Respond to 470s/RFPs
  - Assist in preparing Item 21 for Form 471 (if appropriate)
  - Assist in PIA review (as appropriate – nothing on competitive bidding)
    - File service provider invoices (if appropriate)
    - File service provider annual certification (SPAC)

Appropriate (and Inappropriate) Roles (cont'd)

▸ Service Providers (cont'd)
  ◦ Service providers CANNOT:
    - Be involved in the technology planning process
    - Be involved in the 470 drafting and creation process
    - Be involved in the drafting or creation of any RFPs
    - Be a contact on any of the applicant forms

Appropriate (and Inappropriate) Roles (cont'd)

- Consultants…
  - Are restricted to the same roles as their clients (either applicants or service providers)
  - Should not service both applicants and service providers due to conflicts of interest
  - Must be authorized by their clients for any work that they perform

Failure to Pay Applicants' Share

- For SPIs:
  - Service providers must invoice applicants at the same time they invoice USAC
  - Applicant must pay the bill within 120 days (or less, if their contract dictates)
  - Note that applications are responsible for accuracy of SPIs even though they don't see them
- For BEARs
  - Applicants must have paid the bills in order to receive reimbursements
  - Note that bill balances cannot be shifted from one funding year to another

Failure to Respond

- PIA reviewers typically give applicants 15 days to respond to a question
  - Extensions are generally available, but you need to ask for them
  - Failure to respond means that PIA will process your application with the information they have
    - Hint: they wouldn't be asking for information if they didn't need it to process your application
  - Preferred mode of contact should be checked daily
  - Critical to ensure that during vacations, holidays, etc. the preferred mode of contact from the forms is monitored

Failure to File Invoices

- Many applicants fail to file invoices
  - Changes in personnel
  - Long time period between funding commitment and invoices being due
  - Missing the 120 day deadline
- AZ Libraries have relatively few unfiled invoices
  - 2008: $38,801.26 (2%)
  - 2009: $88,365.11 (8%)
  - 2010: $66,290.39 (4%)

Less Common Situations

Less Common Situations

- Numerous situations in the application process when things go off the rails – and what to do when things go wrong
  - Errors made in the application process
  - Service provider problems
  - Discovery of problems in the application process

Service Provider Issues

- Historically, applicants could change service providers for almost any reason (dissatisfaction, etc.) and at almost any time in the application process
  - More limited after Sixth Report and Order
- Process of changing service providers called a SPIN change
  - Two kinds of SPIN changes – Corrective SPIN changes and Operational SPIN changes
  - Must identify which kind of SPIN change
- Can also change the type of service rec'd (service substitution)

Service Provider Issues (cont'd)

- Corrective SPIN Changes
  - Used to correct errors or deal with other unusual situations
    - Data entry error on the Form 471
    - Service provider acquired/merged/etc. and SPIN changes as a result
    - Other instances when the SPIN changed but the change was not initiated by the applicant
  - Must be submitted after the RAL date (and often before the SSD or FCDL)
  - Typically not granted after the SSD unless service provider initiated

Service Provider Issues (cont'd)

▸ Operational SPIN Change
  ◦ Restrictions
    • SPIN Change allowed under state and local procurement restrictions
    • Allowable under the term of the contract (if applicable)
    • Applicant must notify original service provider
    • *NEW: Must have legitimate reason to change, such as breach of contract or failure to perform*
    • *NEW: Must select the next highest point recipient from your bid evaluation process*

Service Provider Issues (cont'd)

▸ Operational SPIN Change (cont'd)
  ◦ Does not automatically include service substitution
  ◦ Instructions for Operational SPIN change letter on the SLD website
  ◦ Must be filed after the FCDL and before the last date to invoice

Service Provider Issues (cont'd)

▸ Service Substitutions
  ◦ Can, in some circumstances, change the kind of service being rec'd
  ◦ Must:
    • Have same functionality as original service
    • Not result in increased funding request*
    • Not violate a contract or state/local procurement laws
    • Not increase the percentage of ineligible services
    • Be consistent with the establishing Form 470*

Service Provider Issues (cont'd)

- Service Substitutions (cont'd)
  - Must be filed after the RAL and before the last date to receive services
    - Can be filed after services are being rec'd, but risks nonpayment if service substitution denied
  - Can be initiated by service provider (e.g. discontinued product)
  - Most commonly used for internal connections, but can be used for other services as well

Audits

- SLD changing course on audits
  - Two new programs: PQA and BCAP
  - The Good:
    - Audits will be more focused than in the past
    - Fewer on-site audits than in the past
    - Auditors will be better trained (supposedly)
  - The Bad:
    - There will be more audits than in the past
  - The Ugly:
    - Political pressure for audits increasing

Audits (cont'd)

- Program Quality Assurance (PQA)
  - Started in August 2010
  - Evaluating:
    - Accuracy of payments
    - Eligibility of applicants
    - High level program compliance
  - Uses both documentation USAC already has an requests additional documentation as necessary
  - Technically "quality assurance," not an audit*

Audits (cont'd)

- Program Quality Assurance (cont'd)
  - Types of documentation being requested:
    - Audited financial statement (requested to document non-profit status; can provide alternative documentation)
    - Invoice(s) associated with the FRN under review
      - Provide clarification is necessary/appropriate
    - Tech plan approval letter (if applicable)
    - Signed original of PQA letter with certification
    - List of recipients of service (if not on invoice)
    - Document/confirm no endowment over $50M
    - Document being eligible school or library

Audits (cont'd)

- Beneficiary and Contributor Audit Program (BCAP)
  - Formal audit program
  - Audit type and scope tailored on a case by case basis
    - Size of disbursement
    - One size does not fit all
  - Audits will take place (typically on-site) throughout the year
    - Not during the last two weeks of the application window

Audits (cont'd)

- Beneficiary and Contributor Audit Program (cont'd)
  - Try to maintain reasonable cost/disbursement ratio
  - Designated USAC staff contact for each audit
  - Auditors to plan prior to arriving

Funding Denials

- Happen in three possible places:
  - Funding Commitment Decision Letter
  - Invoicing
  - Post–Audit (Commitment Adjustment)
- Can always be appealed
  - Almost always worth appealing
  - Appeal first to the SLD
  - Appeal second to FCC
- For multiyear contract, denial in one year will typically result in multiyear denials

Funding Denials (cont'd)

- Denial at Funding Commitment Decision Letter
  - Indicates the amount denied
  - FRN status: NOT FUNDED
  - Typically occurs because PIA reviewer believes there was a program violation
  - Program violation will be included in the FCDL
- Denial in Invoicing
  - Euphemism for denial: "Zero Funded"
  - Not actually a denial, just a denial of funding
    - Can resubmit invoice

Funding Denials (cont'd)

- Commitment Adjustment (COMAD) is the euphemism for decreasing (or recovering) funding commitments
  - Issued after an audit or other application review
  - Notice of Intent issued first outlining the reasons for the COMAD

Appeals

- Timelines for appeals vary based on when the denial occurs
  - Typically appeal to SLD within 60 days of initial denial letter (FCDL, Invoicing, or COMAD letter)
  - Typically appeal to FCC within 60 days of SLD appeal denial
  - Make sure you read the denial letters closely
    - Letters include the reason for denial (usually)
   - "Approved, Funding Denied"

Appeals (cont'd)

- SLD Appeals
  - Basic information for filing appeal with SLD included in the initial denial letter
  - More in depth information at http://www.universalservice.org/sl/about/appeals/default.aspx
  - Be sure to include documentation with the appeal (even if it has previously been submitted at some point)
  - SLD lacks authority to waive program rules
    - Be sure to address the reason for the denial and contest it

Appeals (cont'd)

▸ FCC Appeals
  ◦ Can appeal SLD decision and/or request a waiver from the rules
  ◦ If SLD appeal has not been made/denied, FCC typically refers the appeal to the SLD
  ◦ Directions for filing appeal also on SLD website – however, check other appeals for formatting, content, style
    • Law > Facts > Emotion
  ◦ Include appropriate documentation

Questions ?
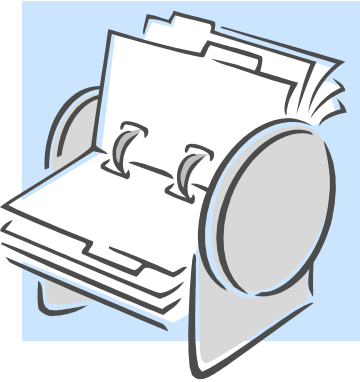
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